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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,519	05/24/2006	Malcolm Douglas Emmett	EMME.P01	2365
10027 7590 12/02/2008 ANDERSON, LEVINE & LINTEL L.L.P. 14785 PRESTON ROAD SUITE 650 DALLAS, TX 75254				
EXAMINER				
RUSSELL, CHRISTINA MARIE				
ART UNIT		PAPER NUMBER		
2837				
MAIL DATE		DELIVERY MODE		
12/02/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/580,519

Applicant(s)

EMMETT, MALCOLM DOUGLAS

Examiner

CHRISTINA RUSSELL

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-48 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Two Main Species:

Group I: Figures 5, 6 and 13-15

Group II: Figures 1-4 and 7-12

Sub-Species that apply to Group I and II:

A: Figures 3-8 and 13-15 (control means provided adjacent an internal surface)

B: Figures 1-6, 9, 10 and 13-15 (bi-metallic strip held at one end and having a free end)

C: Figures 1-14 (bi-metallic strip substantially straight)

If Group I is chosen, Applicant must further select from the following sub-species:

I: Figures 5, 6 and 13-15 (bi-metallic strip arched)

II: Figures 13-15 (further comprising a second bi-metallic strip)

If Group II is chosen, Applicant must further select from the following sub-species:

I: Figures 1, 2 and 9-12 (control means provided adjacent an external surface)

II: Figures 7, 8, 11 and 12 (bi-metallic strip held at two locations)

III. Figures 1, 2 and 9-12 (further comprising a cover)

IV: Figures 9-12 (cover adopts a flatter configuration when fluid outlet is closed)

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The claims are deemed to correspond to the species listed above in the following manner:

Claims 2, 13, 25 and 36 applied to Figures 5, 6 and 13-15;

Claims 3 and 26 applied to Figures 1-4 and 7-12;
Claims 9 and 32 applied to Figures 3-8 and 13-15;
Claims 10, 21, 22, 33, 44 and 45 applied to Figures 1, 2 and 9-12;
Claims 11 and 34 applied to Figures 1-6, 9, 10 and 13-15;
Claims 12 and 35 applied to Figures 1-14;
Claims 14-16 and 37-39 applied to Figures 13-15;
Claims 17 and 40 applied to Figures 7, 8, 11 and 12;
Claims 23 and 46 applied to Figures 9-12.

The following claim(s) are generic: Claims 1, 4-8, 18-20, 24, 27-31, 41-43, 47 and 48.

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:
4. The two main species differ in that one provides the fluid outlet open when the system is in use, and closed when idle, while the other provides the fluid outlet closed when the system is in use, and opened when idle.
5. The sub-species provide for variations in the structure, by providing various elements and different configurations, such as the control means being adjacent an internal or external surface, the bi-metallic strip being held in one location or two, the silencer comprising a cover, the silencer comprising a second bi-metallic strip, etc.

6. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

7. The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINA RUSSELL whose telephone number is (571)272-4350. The examiner can normally be reached on Mon-Fri, 7-4.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on 571-272-2227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Art Unit: 2837

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christina Russell/
Examiner, Art Unit 2837
12/1/2008

/Walter Benson/
Supervisory Patent Examiner, Art Unit 2837